

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 29, 2003

GSBCA 15890-TRAV

In the Matter of PANFILO MARQUEZ

Panfilo Marquez, Paris, France, Claimant.

Chauncey R. Lynch, Chief, Payments Division, Office of Fiscal Operations,
Department of State, Washington, DC, appearing for Department of State.

HYATT, Board Judge.

The Government is not authorized to reimburse employees for the cost of furniture purchased in connection with the rental of unfurnished accommodations during the performance of temporary duty travel.

Background

Claimant, Panfilo Marquez, is an employee of the Department of State, currently stationed in Paris, France. His claim is for reimbursement of certain costs incurred while he was on a temporary duty (TDY) assignment in the Washington, D.C., area. In particular, while between overseas assignments, Mr. Marquez was enrolled in long-term training in Washington, D.C., from February to September 2002. The State Department's Foreign Affairs Manual (FAM) prescribes a reduced per diem rate for long-term TDY assignments. In anticipation of receiving the reduced per diem amount, Mr. Marquez determined that the least expensive option for staying in the Washington, D.C., area for some six months would be to rent an unfurnished apartment and purchase furniture. He did this, and then applied for reimbursement of the cost of the furniture he purchased, pointing out that to purchase the furniture was no more expensive, and possibly less costly, than to rent it.¹ The State Department declined to pay for this item of expense, explaining that it lacked the authority

¹ Specifically, Mr. Marquez purchased a television set, bedroom furnishings, a desk and office supplies, kitchen supplies, two chairs, and an entertainment center for which he seeks reimbursement of the amount of \$2417.53. Mr. Marquez bought additional items of furniture for the apartment as well, but has not sought to be reimbursed for these items because the total amount claimed would then exceed the maximum allowable per diem for the first thirty days of TDY.

to do so because the Government does not buy furniture for employees. Mr. Marquez maintains that in the long run purchasing the furniture was the cheaper, and thus more prudent, means of obtaining lodging while on temporary duty status. He also contends that the State Department's reduced per diem amount is so low as to violate the requirement that an employee should not have to pay for travel expenses out of pocket.

Discussion

Most civilian federal employees who travel on official business are entitled to be paid a per diem allowance at a rate not to exceed the rates for lodging and for meals and expenses established by the Administrator of General Services in the Federal Travel Regulation (FTR). 5 U.S.C. § 5702 (2000); 41 CFR pt. 301, app. A (2002). Foreign service offices of the State Department, however, are subject to the regulations set forth in the FAM, which is promulgated under the authority of the Foreign Service Act. 22 U.S.C. § 4081 (2000). The FAM establishes a "uniform worldwide lodgings-plus per diem computation system for all official travel, based on travel inside and outside the continental United States." 6 FAM 151.1; see Christopher Paddock, B-212445 (Feb. 14, 1984). The FAM adopts the per diem rates established in the FTR for travel within the continental United States. 6 FAM 152.2-1.

Although not identical, the two sets of travel regulations have similarities. When an employee is expected to be on temporary duty for an extended period of time, the FTR provides that the lodgings-plus system is not mandatory, but rather that a reduced per diem rate may be authorized. 41 CFR 301-11; see Timothy P. Twigg, GSBCA 14379-TRAV, 98-1 BCA ¶ 29,522 (1997); Robert H. Chappell, GSBCA 14186-TRAV, 98-1 BCA ¶ 29,508 (1997). A similar provision is contained in the FAM:

- (1) For the initial 30 days of temporary duty in one location, the employee will be reimbursed the daily locality rate based on the lodgings plus per diem system. . . .

. . . .
- (3) For the 31st through the 120th day of temporary duty, the employee may be reimbursed at a daily locality rate not to exceed 50 percent of the lodging and 50 percent of the M&IE [miscellaneous and incidental expenses] per diem rate.
- (4) For the 121st day and succeeding day(s) of temporary duty, the employee may be reimbursed at the daily locality rate not to exceed 25 percent of the lodging and 25 percent of the M&IE per diem rate. . . .
- (5) Notwithstanding the provisions of this section, an authorizing officer may authorize or approve other rates

(never, however, to exceed the maximum locality per diem rate) when, in the authorizing officer's judgment, circumstances warrant such a determination. Such circumstances include the nature of the duty to be performed and the cost of suitable available lodging.

6 FAM 153.3-3.

Claimant states that the reduced per diem payments available to him while on extended temporary duty required him to consider ways to economize and minimize his temporary living expenses. He purchased furniture for use in his apartment after determining that it was the least costly option available to him and he maintains that he should, under the regulations, be reimbursed for these purchases. In support of his position, Mr. Marquez refers us to FTR section 301-11.15:

When [the employee rents] a room, apartment, house or other lodging on a long-term basis (e.g., weekly, monthly), the following expenses may be considered part of the lodging cost:

(a) The rental cost for a furnished dwelling; if unfurnished, the rental cost of the dwelling and the cost of appropriate and necessary furniture and appliances (e.g., stove, refrigerator, chairs, table, bed, sofa, television, or vacuum cleaner).

41 CFR 301-11.15 (2001). Mr. Marquez suggests that the regulation does not explicitly limit reimbursement of expenses to rented furniture and appliances needed for unfurnished lodgings and that he should, therefore, be compensated for the cost of the furniture he purchased.

For its part, the agency simply takes the position that it has no authority to reimburse employees for expenditures of this nature in connection with official travel. Thus, claimant's voucher for reimbursement of the costs of purchasing furniture was disallowed.

First, we note that the FTR provision relied upon by claimant has not been included by the State Department in the FAM and thus is not applicable to claimant's circumstances.² We recognize that it is technically possible to read the quoted FTR language as permitting the purchase of furniture for use in an unfurnished dwelling. Even if the FTR were applicable here, however, we would not be inclined to adopt the interpretation advocated by Mr. Marquez. Prior to the conversion of the FTR to a question and answer format, the regulation expressly limited reimbursement to rental furniture, so that the question raised by Mr. Marquez would not have arisen. See, e.g., 41 CFR 301-7.14 (1996). In construing the regulation as rephrased, we must consider the context and the extent of the statutory authority

² The FAM provides that "[t]he Federal Travel Regulations do not apply to Foreign Service personnel except as specifically specified by Department regulations." 6 FAM 111.2-2.

under which travel expenses are reimbursed. Employees have, of course, routinely been permitted to include in the calculation of lodging costs the cost of rental furniture for use in an unfurnished dwelling that is leased in connection with a long-term temporary duty assignment. Tita D. Corpuz, B-256576 (Jan. 17, 1996); Aaron L. Howe, B- 217435 (Aug. 29, 1985). In contrast, it has been equally well-settled that personal items and furnishings purchase by employees for use in connection with official travel generally may not be paid for by the Government. See Soching Tsai, GSBCA 16058-TRAV (May 22, 2003); Thomas J. May, GSBCA 15030-TRAV, 99-2 BCA ¶ 30,488. Further, although the General Accounting Office (GAO) has held that employees stationed outside the United States, who rent furniture with an option to buy while living abroad, may include the rental expenses as a reimbursable cost for purposes of their living quarters allowance, the employees must refund reimbursed expenses in the event that they exercise the option to buy the furniture. B-259520 (Dec. 7, 1995). In essence, "there is no authority to include payments made on items of personal property for the purpose of eventual ownership." Lucius Grant, Jr., 62 Comp. Gen. 635, 637 (1983).

GAO has explained that "[t]he premise of the law in this area is that items of value resulting from the expenditure of government funds belong to the government. Employees are not free to retain and use such items without the government's permission." Southwest Airlines, B-254848 (Nov. 22, 1995). In looking at the current phrasing of the FTR, we are persuaded that GSA did not intend to retreat from this settled premise. Absent a clearer expression of intent to permit employees to purchase and retain furniture incident to long-term official travel assignments, we conclude that the regulation continues to permit reimbursement of expenses attributable to the rental, but not the purchase, of furniture.

In short, even the FTR cannot properly be construed to authorize an agency to reimburse an employee's purchase, in lieu of rental, of furniture pursuant to extended travel on official business. Nothing in the State Department's statutory authority or implementing regulations suggests that these purchases are authorized for foreign service employees. Accordingly, we conclude that the State Department properly disallowed this expense.

Mr. Marquez further argues that if he cannot be reimbursed for the expense of buying the furnishings he used, then the reduced per diem amounts established by the State Department with respect to reimbursement of his lodging expenses while on extended temporary duty should be invalidated because they violate the spirit of 5 U.S.C. § 5702, which provides that employees traveling on official business be compensated for the expenses of travel. He also urges that the State Department regulations violate the Antideficiency Act, 31 U.S.C. § 1341. In essence, Mr. Marquez believes that the reduced entitlements under the FAM essentially force employees to bear a substantial portion of the cost of extended TDY travel, which effectively translates to requiring employees to volunteer their services in the form of cash payments for costs associated with official business.

The statutory provision relied upon by Mr. Marquez permits State, under the FAM, to establish per diem rates for reimbursing employees who are required to perform official travel. Under the FTR, agencies are permitted to establish a reduced per diem rate for extended TDY travel and are charged with determining the individual levels of

reimbursement that will be permitted in the circumstances.³ The State Department has adopted a similar policy in the FAM. Claimant urges that it is impossible for employees to obtain temporary lodgings within the limits of the agency's reduced rates and that virtually all employees are forced to incur unreimbursed out-of-pocket expenses under these circumstances. He further points out that most other agencies have authorized significantly higher reduced rates and that various organizations have appealed to the State Department to establish more realistic rates. Although we sympathize with claimant's dilemma, we are not in a position to conclude that the State Department has no reasonable basis to support the reimbursement levels it has established. The agency is permitted to exercise its discretion in establishing an appropriate method by which to reimburse employees for official travel expenses.

CATHERINE B. HYATT
Board Judge

³ It should be noted that if claimant's TDY were covered by the FTR and if he had rented, rather than purchased, furniture, the State Department would have had authority to amend his travel orders to pay for actual subsistence expenses upon an appropriate showing that the reduced allowances were truly insufficient to cover expenses incident to his official travel. 41 CFR 301-11.302.